

LUTHER HALSEY.

MAY 25, 1842.

Read, and made the special order of the day for Monday next.

Mr. COWEN, from the Committee of Claims, submitted the following

REPORT:

*The Committee of Claims, to which was referred the petition of Luther Halsey, report:*

That the petitioner represents that he entered into a contract with, or executed a bond to, the United States, that he would reserve for and make over to the Government a site for a marine hospital, in the vicinity of Pittsburg, Pennsylvania, for a stipulated sum; that this bond was required of him by the commission for carrying into effect the provisions of the act of Congress of 1837, for the selection of sites for marine hospitals on the Western rivers and lakes. The petitioner states that he "was assured by the commission that no delay was to be anticipated beyond the ensuing session of Congress." He represents that it was in consideration of this assurance that he "proceeded to contract." He asks for an act appropriating money to pay for this site. By an act of Congress approved March 3, 1837, the President of the United States was authorized to select, and cause to be purchased, suitable sites for marine hospitals on the Western rivers and lakes, not to exceed for the river Mississippi three, for the river Ohio three, and for Lake Erie one. The President, in carrying into effect the law, was authorized to call to his aid not exceeding three "medical men of the army;" and fifteen thousand dollars was appropriated to effect the purchase of these sites.

A commission, under this law, composed of Surgeon B. F. Harney, and Assistant Surgeons H. L. Heiskell and J. M. Cuyler, proceeded to the discharge of the duties, and reported to the Secretary of War, November 17, 1837. Their reconnoissance resulted in their selecting and purchasing sites—

*On the Mississippi river.*

At Natchez, 10 acres, amounting to	-	-	-	-	\$7,000
At Napoleon, mouth of Arkansas, 10 acres and a fraction	-	-	-	-	1,000
At St. Louis, 18 acres and a fraction	-	-	-	-	7,460

*On the Ohio river.*

At Paducah, 10 acres	-	-	-	-	1,000
At Louisville, 8 acres and a fraction	-	-	-	-	6,000
At Wheeling, 11 acres	-	-	-	-	5,500

*On Lake Erie.*

At Cleveland, 8 acres and a fraction

\$12,000

\$39,968

The commissioners in this report say : " As the sites were purchased for considerably less than the same ground could have been bought for private purposes, it is respectfully recommended that the early attention of Congress be called to the subject, in order that if the selections should be approved by the proper authority, the land may be paid for and secured. (See Executive Document, 2d session 25th Congress, No. 3, page 210.)

Subsequently, in 1840, it having been represented that Pittsburg was a better location than Wheeling for a marine hospital, a commission, composed of Surgeons Thomas G. Mower and H. L. Heiskell, and Assistant Surgeon Sylvester Day, was constituted, for the purpose of inquiring into the relative advantages of Pittsburg, Pennsylvania, and Wheeling, Virginia, for sites for marine hospitals to be erected on the upper Ohio. This board reported to the Surgeon General, Thomas Lawson, September 7, 1840, and in favor of Pittsburg. In reference to the sites, the report says : " Several sites in the vicinity of Pittsburg were examined by the board, none of which appeared to combine as many advantages as the one selected and contracted for by the late commission. The board therefore approve their choice, and respectfully recommend that the title to the land be confirmed, by the payment of the purchase money at as early a day as practicable." (See Executive Document, 2d session 26th Congress, vol. 1, No. 2, page 201.)

From a report of the Surgeon General to the Secretary of War of February 17, 1840, it appears that another commission had been appointed, before that which reported in September, 1840, for the same purpose of determining between Pittsburg and Wheeling, and had reported prior to this report of the Surgeon General. This second commission, it is presumed, made the contract with the petitioner. (See report of Surgeon General of February, 1840; and Executive Document, 1st session 26th Congress, vol. 3, No. 131.)

On the 19th day of February, 1842, a letter from the Secretary of War, under the date of February 15, 1842, to the President, relative to these commissions, and the confirmation of the contracts for sites, with certain documents, was communicated to the House of Representatives. (See Document No. 94.) It is found, upon examination of this document, (page 3,) that the site at Pittsburg comprises 10 acres 40.48 poles, and that the contract price is \$10,253, and that the original deed is deposited in the office of the Surgeon General. Page 5 of the same report shows that the purchase of the Pittsburg site was made in 1839, from Luther Halsey.

On the 29th of March, 1842, a letter was addressed to the Secretary of War, by the clerk of the committee, by order of the chairman, accompanied by the petition of the petitioner, asking for " a copy of the bond of Mr. Halsey, of which he speaks, and of all contracts, to which he is a party, with the United States, relative to a site for a hospital on the Western waters." The answer of the Secretary of War, dated March 30, 1842, refers " to the message of the President, of the 16th February last, to the House of Representatives, (see Document No. 94,) and to the Surgeon General's

reports, which accompanied the President's annual messages of December, 1839 and 1840."

The petitioner has not given the date of his contract, nor has he given the names of the agents of the Government with whom he contracted. None of the documents to which we are referred by the Secretary of War supplies this information, further than that the contract was made in 1839.

It appears, by the letter of the Secretary of War of February last, that none of these contracts have been confirmed. The aggregate of the sums stipulated to be paid by the commissioners for the seven sites, including the Wheeling and excluding the Pittsburg site, is, as has been seen, \$39,968. If we take in the Pittsburg and leave out the Wheeling site, the aggregate is increased to \$44,468. "The appropriation of \$15,000, which was made for this object in 1837, less \$25 56 expended in the prosecution of the examinations, &c., at the close of the" year 1839, "passed to the sinking fund of the Treasury of the United States." (See Document No. 131, page 4, Executive Documents, 1st session 26th Congress.)

There has been unanimity of opinion among all the different agents who have participated in the administration of the act of 1837, in favor of a confirmation of the contracts of purchase. The humane purpose for which the law was passed commends itself to the favorable regard of all who desire the alleviation of the condition of that useful class of men for whose benefit it was designed. But while the committee fully concur with the Secretary of War, Surgeon General, and the different commissions, in their views as to the importance of the proposed works, they consider it very questionable whether any one of the contracts entered into by the commissioners should be confirmed. It is deemed important that those who are clothed with powers under an act of Congress should look to, be governed by, and not permitted to transcend those powers. Those designated to carry into effect a law of Congress should consider the law their rule of action. To that they should defer; by it their discretion is limited. Congress determined to have sites located and procured on the Western waters for seven marine hospitals; that the cost of those sites should not exceed \$15,000. The President was authorized to administer this law. He was authorized and required to select and purchase sites for seven hospitals. He was empowered to call to his aid three medical men of the army. This he did. They entered upon the service. They were required to locate the sites on the Western waters—on the rivers Mississippi and Ohio, and Lake Erie. Their discretion as to place was thus limited. They were required to purchase the sites for \$15,000. They had no more right to go beyond the limit of price than to disregard the limit as to place. It would have been equally justifiable in this commission to have reconnoitered the Missouri river and Lake Michigan, under their commission, as to have stipulated for the purchase of sites at a cost above the appropriation. Upon what principle is this practice justified? Is there any other reason to be given for it, than that Congress passed the law in ignorance of the facts and circumstances necessary to be known, to carry out the purpose in the contemplation of Congress? The commission must have considered that they had found that Congress erred in the opinion that \$15,000 was enough to purchase suitable sites. This, the committee think, is what should never be tolerated. Law-makers should never permit their agents to change or disregard the law for their government. If it be done in one case, and to a small extent, it may be done in all cases, and to any extent. The most trivial departures, it is submitted, should be

rebuked. The most plausible reasons for such departures should be wholly discountenanced. Such reasons are for legislators, not for the ministers of the law. It is enough for the agent to know what is the will of his principal.

The committee are of opinion, and submit, that in all cases where a law prescribes a clear and specific duty to an officer of the Government, limiting his discretion, that officer should not be permitted to transcend those limits; and if he does, his acts should be disaffirmed. It is more important that this principle should be strictly adhered to, where limitations in appropriations of money are exceeded. This is a branch of the public service in which the temptation to exceed authority is greater than elsewhere. The committee do not intend to arraign the motives or pass censure upon the medical gentlemen who composed these commissions, nor upon any other officer of the Government. The practice of exceeding appropriations, with public officers, has become so common, and has been so long and frequently winked at, that it has ceased to be regarded as offensive to do so. Numerous precedents sustain the course of these commissioners in this case; and it is due to these gentlemen to say, that the committee would consider it unjust to impute to them other than honorable motives in the performance of the service.

The committee, though it may be true, as represented, that it will be a serious injury to the petitioner, feel constrained, for the reasons given, to recommend a disaffirmance of the conditional contract between him and the commissioners. The commissioners knew the extent of their authority. So did the petitioner. He was induced to contract by the assurance of the commissioners that Congress would act at the next session. He must have known that, as it depended upon the action of Congress, that body would exercise a discretion; that we were not bound to register the acts or obey the will of those who gave him the assurance. The petitioner has given no proof whatever as to loss or injury to be apprehended from a loss of this contract. No disadvantage can have resulted, other than preventing improvement and sale of the land. The committee submit and recommend the adoption of the following resolution:

*Resolved*, That the petitioner is not entitled to relief.